

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL YABAI,

Plaintiff

-v-

BUILDING SERVICE 32BJ BENEFIT FUNDS,

Defendant,
-----X

AFFIDAVIT

07-CV-7255 (LAP)

STATE OF NEW YORK)
) : ss:
COUNTY OF NEW YORK)

MARIO BULDING, being duly sworn, deposes and says:

1. I am Director of Retirement Services for the Building Service 32BJ Pension Fund. This affidavit is made upon direct knowledge of the facts and particulars of Michael Yabai's application for disability benefits.

2. Michael Yabai submitted a 32BJ Application for Disability Benefits on or about August 7, 2006 (Exhibit A).

3. By letter dated September 14, 2006. Mr. Yabai was informed that he was not eligible for either a disability pension or long term disability benefits (Exhibit B).

4. Mr. Yabai appealed the determination to the Fund Trustees. By letter dated December 18, 2006, Mr. Yabai was informed that the appeal was denied (Exhibit C).

5. Under the rules of the 32BJ Pension Plan, a participant is eligible for a disability pension if he is totally and permanently disabled; has at least 120 months of service credit; and became disabled while working in covered employment. Section 4.09, page 11 of the Plan

(Exhibit D)

6. The service credits are subject to the Plan's break-in- service rules. A participant who has not achieved vesting status has a permanent break- in-service if, after June 30, 1976, he has consecutive one year breaks that equal or exceed the number of years of vesting service with which he has already been credited. Section 5.03 (c), page 17 of the Plan.

7. In Mr. Yabai's case, he incurred a permanent break in service for the years 1978-1980, canceling his previous credit. His work history in covered 32BJ employment was as follows:

Ogden Allied Maintenance	1975-1977
Temco Service Industries	1981-1983
Temco Service Industries	1985
Temco Service Industries	1987-1991

The above information is based on Mr. Yabai's Social Security Administration earnings statement (Exhibit E).

8. After returning to work in 1981, he worked off and on in the industry until permanently ceasing covered employment in 1991. He earned a total of 98 months of service credit, well short of the required 120 credits for a disability pension (Exhibit F).

9. Under the rules of the 32BJ Health Plan, in order to be eligible for long-term disability benefits, a participant must be totally and permanently disabled; must have become so disabled while working in covered employment; and must have had at least three consecutive years of eligibility in the Health Fund at the time he stopped working due to the disability. Page 11 of the Health Plan (Exhibit G).

10. The Social Security Administration, in awarding Mr. Yabai disability benefits, found that the onset of disability was June 30, 1996 (Exhibit H). Mr. Yabai's own treating physician

stated that the symptoms first appeared in December, 1997 (See Exhibit A). Even accepting the earlier date, Mr. Yabai is ineligible for long term disability benefits, as he ceased working in covered employment in 1991, and therefor did not have three consecutive years of coverage in June, 1996.

11. I am also submitting the remainder of Mr. Yabai's administrative file (Exhibit I).


MARIO BULDING

Sworn to before me this
25 Day of January, 2008



Notary Public

ELIE CHENG
Notary Public, State of New York
No. 01CH6152226
Qualified in Queens County
Commission Expires 9/5/2010